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**COPY MAILED**  
**NOV 09 2006**

In re Application of :  
Deem et al. :  
Application No. 10/630,473 : LETTER REGARDING  
Filed: July 29, 2003 : PATENT TERM ADJUSTMENT  
Atty Docket No. 38349-0103H :

This letter is in response to the "LETTER REGARDING PATENT TERM ADJUSTMENT PURSUANT TO COMMENT 43 OF THE FINAL RULE" filed September 8, 2006.

The request for correction of the initial determination of patent term adjustment (PTA) is **DISMISSED**.

Applicants request review of the patent term adjustment calculations as it pertains to the Office's withdrawal of issuance, after payment of the Issue Fee, and the subsequent mailing of Interview Summary and second Notice of Allowance.

As stated in comment 43 of the Final Rule, practitioners are under a duty to disclose to the Office an error in their favor in the calculation of patent term adjustment. For example, if a registered practitioner receives determination that the application is eligible for a 1,500 day adjustment and the practitioner is not sure exactly what the adjustment should be, but believes that the adjustment should be 1,000 days, the practitioner does have a duty to disclose the error to the Office, regardless of whether the issue fee is paid using the Office-generated form (PTOL-85B) or an attorney-generated equivalent. In order to comply with this duty and where the correct adjustment is thought to be less than indicated by the Office, an application for term adjustment under 1.705(b) need not be filed. Instead, a letter could be filed with the issue

fee payment, indicating that the term adjustment is thought to be longer than appropriate.

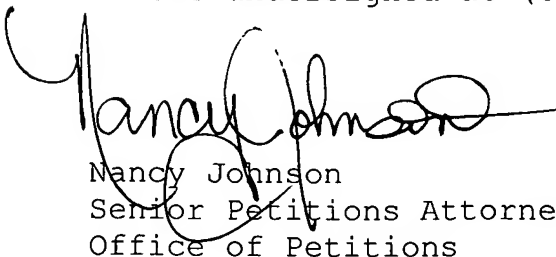
Practitioner's disclosure has been considered. However, the circumstances of the withdrawal from issuance do not warrant reduction of the patent term adjustment. By Notice mailed March 20, 2006, the Office withdrew the application from issuance under 37 CFR 1.313 to permit reopening of prosecution, due to newly discovered references. On June 19, 2006, the Office mailed a new Notice of Allowance and Interview Summary. Such action by the Office does not warrant reduction of the patent term adjustment. Further, with respect to this event, the record does not indicate that applicant took any action warranting reduction of patent term adjustment.

In view thereof, it is concluded that the determination of PTA at the time of the mailing of the notice of allowance of ZERO (0) days is correct.

As this letter was submitted as an advisement to the Office of an error in applicant's favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The Office of Patent Publication has been advised of this decision. The application is, thereby, forwarded to the Office of Patent Publication for issuance of the application.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation

Day : Monday  
Date: 11/13/2006

# **PALM INTRANET**

Time: 15:55:27

## **PTA Calculations for Application: 10/630473**

Application Filing Date:	07/29/2003	PTO Delay (PTO):	0
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	101
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	0		

## **File Contents History**

Number	Date	Contents Description	PTO	APPL	START
64	06/19/2006	MAIL NOTICE OF ALLOWANCE			
63	06/19/2006	MAIL EXAMINER'S AMENDMENT			
62	06/19/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
61	06/19/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
60	03/21/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
59	03/20/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
58	06/14/2006	EXAMINER'S AMENDMENT COMMUNICATION			
57	06/14/2006	CASE DOCKETED TO EXAMINER IN GAU			
56	03/20/2006	ISSUE REVISION COMPLETED			
55	03/23/2006	FINISHED INITIAL DATA CAPTURE			
54	03/20/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
53	03/20/2006	NOTICE OF ALLOWABILITY			
52	03/20/2006	DATE FORWARDED TO EXAMINER			
51	03/20/2006	WITHDRAWAL OF NOTICE OF ALLOWANCE			
50	03/17/2006	APPLICATION IS CONSIDERED READY FOR ISSUE			
49	03/01/2006	ISSUE FEE PAYMENT VERIFIED			
48	03/01/2006	ISSUE FEE PAYMENT RECEIVED			
47	02/27/2006	WORKFLOW - QUERY REQUEST - FINISH			
46	02/06/2006	MAILING CORRECTED NOTICE OF ALLOWABILITY			
45	02/03/2006	CORRECTED NOTICE OF ALLOWABILITY			
44	01/19/2006	PUBS CASE REMAND TO TC			

43	01/26/2006	WORKFLOW - QUERY REQUEST - BEGIN			
42	12/06/2005	EXPORT TO INITIAL DATA CAPTURE			
41	12/01/2005	MAIL NOTICE OF ALLOWANCE			
40	11/29/2005	ISSUE REVISION COMPLETED			
39	11/29/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
38	11/28/2005	NOTICE OF ALLOWABILITY			
37	11/28/2005	DATE FORWARDED TO EXAMINER			
36	11/14/2005	RESPONSE AFTER NON-FINAL ACTION		5	35
35	08/09/2005	MAIL NON-FINAL REJECTION			
34	08/08/2005	NON-FINAL REJECTION			
33	02/11/2005	REFERENCE CAPTURE ON IDS			
32	02/11/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
31	06/01/2005	DATE FORWARDED TO EXAMINER			
30	05/25/2005	RESPONSE AFTER NON-FINAL ACTION		86	26
29	05/25/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
28	09/17/2004	REFERENCE CAPTURE ON IDS			
27	09/17/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		10	23
26	11/30/2004	MAIL NON-FINAL REJECTION			
25	11/29/2004	NON-FINAL REJECTION			
24	09/27/2004	DATE FORWARDED TO EXAMINER			
23	09/07/2004	RESPONSE AFTER NON-FINAL ACTION			
22	09/07/2004	WORKFLOW INCOMING AMENDMENT IFW			
21	06/24/2004	CORRESPONDENCE ADDRESS CHANGE			
20	06/16/2004	MAIL NON-FINAL REJECTION			
19	06/14/2004	NON-FINAL REJECTION			
18	04/05/2004	MISCELLANEOUS INCOMING LETTER			
17	04/26/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
16	03/20/2004	CASE DOCKETED TO EXAMINER IN GAU			
15	03/20/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
14	11/18/2003	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
13	11/18/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

12	07/29/2003	NEW OR ADDITIONAL DRAWING FILED			
10	10/24/2003	APPLICATION RETURN FROM OIPE			
9	10/24/2003	APPLICATION RETURN TO OIPE			
8	10/24/2003	APPLICATION RETURN FROM OIPE			
7	10/24/2003	APPLICATION RETURN TO OIPE			
6	10/23/2003	APPLICATION DISPATCHED FROM OIPE			
5	10/24/2003	APPLICATION IS NOW COMPLETE			
4	10/13/2003	CASE CLASSIFIED BY L&R			
3	10/13/2003	CLEARED BY OIPE CSR			
2	09/10/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	07/29/2003	INITIAL EXAM TEAM NN			

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**EXPLANATION OF PTA CALCULATION**

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